

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

BELLEVUE STATE BANK,

Plaintiff,

vs.

KEITH HUENEKE and RHONDA
HUENEKE,

Defendants.

No. C03-1045 LRR

ORDER

This matter is before the Court pursuant to the Motion to Remand (docket no. 2) filed by Plaintiff Bellevue State Bank (the "Bank") on December 24, 2003. The Bank seeks an order remanding this case to the Iowa District Court for Jackson County and for costs.

I. INTRODUCTION

On October 31, 2003, the Bank filed in the Iowa District Court for Jackson County a petition for replevin and request for immediate possession. The Bank alleges that pursuant to a loan settlement agreement, Defendants pledged to the Bank various personal property with an approximate value of \$23,500.00. The Bank further alleges that Defendants are in default because of nonpayment of the amount due. The Bank demands that Defendants return the collateral. A hearing in state court on the Bank's replevin action and request for immediate possession was set in the Iowa District Court for Jackson County for December 19, 2003. On December 18, 2003, Defendant Keith Hueneke filed a Notice of Removal of this case from the Iowa District Court for Jackson County. Keith Hueneke asserts in the Notice of Removal that removal jurisdiction exists under 28 U.S.C. §§ 1446(d), 1331, 1632, 1503 and 1505. On December 24, 2003, the Bank filed a Motion to Remand, a Motion for Expedited Hearing, an Application for Temporary Restraining Order,

and a Motion to Shorten Time for Response to Motion for Remand. In support of the Motion to Remand presently before the Court, the Bank argues that removal is improper because: (1) the Notice of Removal fails to comply with 28 U.S.C. § 1446(b) because it was filed more than 30 days after receipt of the action; and (2) there is no federal question involved in this dispute.

II. ANALYSIS

A. Timeliness of Notice of Removal

Pursuant to 28 U.S.C. § 1446(b), a notice of removal in a civil action must be filed within 30 days after service of the initial pleading or summons on the defendant. Keith Hueneke was served with the state court petition on November 16, 2003. Thus, Keith Hueneke had until December 16, 2003 to file a notice of removal. Keith Hueneke did not file the notice of removal until December 18, 2003. Therefore, the notice of removal was not timely and removal was improper. The Court thus remands this case to the Iowa District Court for Jackson County.¹

B. Subject Matter Jurisdiction

The Court finds that even if Keith Hueneke had filed timely the notice of removal, the Court would still remand the action to state court because this Court lacks subject matter jurisdiction.

¹The Court notes that 28 U.S.C. § 1446(a) states that “[a] defendant or defendants desiring to remove any civil action . . . from a State court shall file . . . a notice of removal.” Although it is not explicit in the statute, it has long been held that under the “rule of unanimity” all served defendants must join in any removal. See *Thorn v. Amalgamated Transit Union*, 305 F.3d 826, 832 (8th Cir. 2002). Each defendant must join or consent within thirty days of service on that defendant. *Marano Enterprises v. Z-Teca Restaurants, L.P.*, 254 F.3d 753, 755-57 (8th Cir. 2001). In the instant case, the record is devoid of any evidence that Defendant Rhonda Hueneke consents to removal. However, the Bank has not raised this as a basis for remand and the Court thus deems this defect waived.

The federal courts are courts of limited jurisdiction and are empowered to hear only those cases within the judicial power of the United States as defined by Article III of the Constitution. This principle demonstrates the proper respect for state courts in matters arising under federal law. A federal question arises only in “those cases in which a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law.” *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 27-28 (1983). Removal of a state court action to federal court is only “appropriate if the suit could have been brought in federal district court, as ‘founded on a claim or right arising under the Constitution, treaties or laws of the United States.’” *Nahas & Co., Inc. v. First Nat’l Bank of Hot Springs*, 930 F.2d 608, 611 (8th Cir. 1991) (quoting 28 U.S.C. § 1441(b)). The party invoking jurisdiction bears the burden of proof that all prerequisites to jurisdiction are satisfied. *Hatridge v. Aetna Cas. & Sur. Co.*, 415 F.2d 809, 814 (8th Cir. 1969). Removal statutes are strictly construed, and any doubts about the propriety of removal are resolved in favor of state court jurisdiction and remand. *Transit Cas. Co. v. Certain Underwriters at Lloyd’s of London*, 119 F.3d 619, 625 (8th Cir. 1997). When ruling on a motion to remand, courts construe all doubts in favor of remand. *Green v. Ameritrade, Inc.*, 279 F.3d 590, 596 (8th Cir. 2002). Here, the Court finds that the Bank’s well-pleaded complaint does not pose a federal question. The Court therefore remands the matter to state court pursuant to 28 U.S.C. § 1447(c).

Finally, the Bank seeks an award of costs. The Court finds that an award of costs is not warranted in this matter. The Court therefore exercises its discretion in denying the Bank’s request for costs. See 28 U.S.C. § 1447(c).

III. CONCLUSION

IT IS THEREFORE ORDERED that:

1. Plaintiff’s Motion for Remand (docket no. 2) is GRANTED and the Court


REMANDS this action to the Iowa District Court for Jackson County for all further proceedings.

2. The Clerk is directed to provide a certified copy of this Order to the Clerk of Court for the Iowa District Court for Jackson County.

3. Plaintiff's request for costs is DENIED.

4. All remaining motions, including but not limited to, docket nos. 3, 4 and 5, are DENIED as moot.

IT IS SO ORDERED this 8th day of January, 2004.



LINDA R. READE
JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA